

14-2044

Léone Meyer v. Board of Regents of the University of Oklahoma, et al.,

N.Y.S.D. Case #
13-cv-3128(CM)

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 12th day of March, two thousand fifteen.

PRESENT:

PETER W. HALL,
Circuit Judge,

JED S. RAKOFF,
*District Judge.**

**USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: March 12, 2015**

LÉONE MEYER,

Plaintiff-Appellant,

v.

14-2044

THE BOARD OF REGENTS OF THE UNIVERSITY OF
OKLAHOMA, THE UNIVERSITY OF OKLAHOMA
FOUNDATION, INC., DAVID L. BOREN, IN HIS
CAPACITY AS THE PRESIDENT OF THE UNIVERSITY OF
OKLAHOMA,

Defendants-Appellees,

AMERICAN ALLIANCE OF MUSEUMS, ASSOCIATION

* The Honorable Jed S. Rakoff, United States District Judge for the Southern District of New York, sitting by designation. The Honorable Guido Calabresi, originally a member of the panel, recused himself. The decision announced in this order has been reached pursuant to 2d Cir. Local Rule § 0.14(b) by the remaining members of the panel who are in agreement.

OF ART MUSEUM DIRECTORS, DAVID FINDLAY JR.,
INC., WALLY FINDLAY GALLERIES (NEW YORK),
INC., WALLY FINDLAY GALLERIES INTERNATIONAL
DEVELOPMENT CORP., FINDLAY ART
CONSIGNMENTS, INC., FINDLAY GALLERIES, INC.,
DFG ART CORP., DAVID FINDLAY GALLERIES, INC.,

Defendants.

FOR PLAINTIFF-APPELLANT:

Pierre Ciric, The Ciric Law Firm, New
York, NY.

FOR DEFENDANTS-APPELLEES:

Sarah Erickson André, (Thaddeus J.
Strauber & Kristin M. Jamberdino, *on
the brief*), Nixon Peabody, New York,
NY.

Appeal from the judgment of the United States District Court for the Southern District of
New York (McMahon, *J.*).

UPON DUE CONSIDERATION, the case is **REMANDED** for the district court to
decide whether transfer to the United States District Court for the Western District of Oklahoma
would serve the interest of justice.

Appellant Léone Meyer brought this suit to assert her claim to a painting by Camille
Pissaro entitled “La Bergère Rentrant des Moutons” (“Shepherdess Bringing in Sheep”). The
painting was allegedly stolen from Meyer’s father by the Nazis during World War II, and it is now
on display at the University of Oklahoma. Meyer brought suit in the United States District Court
for the Southern District of New York, and her case was dismissed for lack of personal
jurisdiction. In her opposition to the Defendants’ motion for dismissal, Meyer asked in the
alternative for transfer to the Western District of Oklahoma. The district court, however, dismissed

the case without addressing this request for transfer. We assume the parties' familiarity with the underlying facts, the procedural history, and the issues on appeal.


The decision whether to transfer a case, or instead to dismiss it, is governed by 28 U.S.C. § 1406(a), which states that the district court "shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." Determination of whether transfer serves the "interest of justice" lies within the sound discretion of the district court. *See Minnett v. Time Warner*, 997 F.2d 1023, 1026 (2d Cir. 1993).

Meyer argues on appeal that transfer would serve the interest of justice, for several reasons: (1) that the statute of limitations may have run out for a new lawsuit in Oklahoma; (2) that the claim is meritorious; (3) that Meyer filed in New York in good faith, believing that the New York court had personal jurisdiction over several parties who were later dismissed from the action; and (4) that the Defendants will not be prejudiced by a transfer because they are all located in Oklahoma. The Defendants argue, to the contrary, that the interest of justice does not support transfer, for several reasons: (1) that Meyer was not diligent in pursuing her claim, since she did not file a protective lawsuit in Oklahoma until after the statute of limitations in Oklahoma had run; (2) that it was obvious from the outset that personal jurisdiction did not exist in New York; (3) that Meyer only sued in New York as a forum shopping strategy to avoid Oklahoma's more restrictive statute of limitations; and (4) that Meyer's claim is a "sure loser" because of the University of Oklahoma's sovereign immunity defense.

We defer to the district court's judgment concerning whether transfer serves the interest of justice, and review only for abuse of discretion. In this case, however, the district court has not had an opportunity to consider Meyer's transfer request, since the case was dismissed before the question of transfer could be argued. A district court may transfer a case even where it lacks

personal jurisdiction over the defendants. *See Corke v. Sameiet M. S. Song of Norway*, 572 F.2d 77, 79 (2d Cir. 1978). Accordingly, the case is **REMANDED** for the district court to decide whether transfer to the United States District Court for the Western District of Oklahoma would serve the interest of justice.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk


The signature of Catherine O'Hagan Wolfe is written in black ink. A circular official seal of the United States Court of Appeals, Second Circuit, is stamped over the signature. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS" around a central emblem.

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit


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